

09:31:58AM 1 THE COURT: This is a continuing hearing,
09:32:04AM 2 combined, in Cause No. 15-387, United States versus Gerald
09:32:11AM 3 Lesan; and 15-274, United States versus Bruce Lorente.

09:32:27AM 4 Since our last hearing I have received additional
09:32:38AM 5 information. Before I call on counsel to supplement
09:32:52AM 6 whatever you want to say about this, I have a question,
09:32:56AM 7 and then a report of my own.

09:33:00AM 8 The first question is, there is apparently one more
09:33:04AM 9 case assigned to me, Sobaski. What is the status of that?

09:33:10AM 10 MR. FIEMAN: Your Honor, I represent Mr. Sobaski.
09:33:14AM 11 He had entered a plea some months ago. As of now, he is
09:33:21AM 12 sticking with that plea agreement.

09:33:23AM 13 THE COURT: As of now what?

09:33:25AM 14 MR. FIEMAN: As of now he is sticking with his
09:33:27AM 15 plea agreement, and has a sentencing date.

09:33:30AM 16 THE COURT: All right. Now, I just went to a
09:33:35AM 17 Federal Judicial Center seminar in San Diego. Among the
09:33:46AM 18 other materials I received was -- even though this was not
09:33:53AM 19 really the subject of a class down there, I received a
09:34:04AM 20 list of cases arising from this same search warrant and
09:34:13AM 21 event. I noticed when I looked at the material you filed
09:34:21AM 22 recently here, just within the last few days, that all of
09:34:26AM 23 the cases mentioned on their list were mentioned in the
09:34:30AM 24 material you provided me. So there is nothing new there,
09:34:38AM 25 except for two cases that were cited regarding Rule 41,

09:34:50AM 1 where warrants -- one was allowed and one was not allowed.
09:34:57AM 2 One was a Nebraska case, 13-108. That had nothing to do
09:35:03AM 3 with this particular search warrant, but it had to do with
09:35:06AM 4 Rule 41. And another case from the Southern District of
09:35:09AM 5 Texas, another 2013 case, that can be found at 958 Federal
09:35:20AM 6 Supplement 2d 753, where a warrant was not allowed under
09:35:25AM 7 Rule 41. I have not read those cases, but they are part
09:35:35AM 8 of what was presented at the -- at least available in the
09:35:41AM 9 written work at the seminar.

09:35:43AM 10 Now, there was another very interesting thing that
09:35:46AM 11 occurred at the seminar that I wanted to pass on to you.
09:35:52AM 12 We had a speaker named Ovie Carroll, who is with the
09:35:58AM 13 Cybercrime Laboratory of the Department of Justice. He
09:36:04AM 14 talked to us about data breaches and cybercrimes,
09:36:10AM 15 et cetera.

09:36:11AM 16 I was surprised to hear him urge the federal judges
09:36:17AM 17 present, a hundred or so of them, that they should use the
09:36:28AM 18 TOR network to protect their personal information on their
09:36:32AM 19 computers, like work or home computers, against data
09:36:43AM 20 breaches, and the like.

09:36:51AM 21 I did not respond to that. I almost felt like saying,
09:36:59AM 22 "That's not a good way to protect stuff, because the FBI
09:37:06AM 23 can go through that like eggshells." And it also seems to
09:37:11AM 24 me probable, although there is no -- I have no evidence to
09:37:17AM 25 support this, just general experience with these things,

09:37:23AM 1 it appears probable that the material that I suppressed in
09:37:38AM 2 the Michaud case is likely to be the result of some
09:37:43AM 3 non-FBI hacker, and likely to be available to the whole
09:37:46AM 4 world. But it is not yet, at least that we know of.

09:37:56AM 5 Now, since our last hearing I received the additional
09:38:04AM 6 filings from both sides in both cases. The defendant
09:38:14AM 7 filed a disk that I have not looked at, but I understand
09:38:25AM 8 basically what is in it. I did look at the spreadsheet,
09:38:29AM 9 which lists a lot more cases. They call that spreadsheet
09:38:38AM 10 the NIT tracker. It listed a number of cases that I had
09:38:48AM 11 not heard about before, that are apparently part of the
09:38:52AM 12 various prosecutions arising from this particular NIT and
09:39:05AM 13 search warrant.

09:39:10AM 14 On the NIT tracker, filed at Docket No. 83-1 -- I
09:39:18AM 15 didn't count the cases, but there are a lot more cases
09:39:20AM 16 listed than what we had notice of before. I guess there
09:39:38AM 17 is no attempt to list the bottom line on various rulings
09:39:44AM 18 that have been made. What is apparent, however, is that
09:39:51AM 19 there are a lot of cases with suppression motions that are
09:39:57AM 20 either in process or have been ruled on, and some are
09:40:06AM 21 pending possible appeal.

09:40:10AM 22 What else, counsel, do you want to tell me?

09:40:18AM 23 MR. HAMOUDI: Good morning, your Honor.

09:40:27AM 24 THE COURT: I didn't identify everybody here.
09:40:30AM 25 Perhaps you should when you speak so the reporter can be

09:40:34AM 1 sure he gets the right name attached with what you say.

09:40:38AM 2 MR. HAMOUDI: Good morning, your Honor. Mohammad
09:40:42AM 3 Hamoudi on behalf of Mr. Lorente.

09:40:45AM 4 Your Honor, one of the concerns that the defense has
09:40:50AM 5 is that the government does not actually provide a list of
09:40:55AM 6 cases, and they just provide a number, which initially was
09:41:01AM 7 137 individuals, and then now it appears to have grown to
09:41:06AM 8 186 individuals.

09:41:09AM 9 The problem that presents is that apparently they know
09:41:14AM 10 a number to provide a number. So logic tells me that if
09:41:19AM 11 there is somebody who is counting things, they would
09:41:22AM 12 appear to know names associated with those numbers.

09:41:26AM 13 I know that Mr. Michaud's counsel, Mr. Fieman, moved
09:41:31AM 14 to have this court disclose the list of cases that Main
09:41:35AM 15 Justice has. And the reason we believe that list is
09:41:39AM 16 important is twofold: One, because, as the court alluded
09:41:46AM 17 to last week, it informs this court's inquiry, either
09:41:52AM 18 today and proceeding forward.

09:41:54AM 19 Secondly, our office is coordinating nationally
09:41:57AM 20 with other defense counsel to insure that these issues are
09:42:00AM 21 preserved. And we are particularly disadvantaged when we
09:42:05AM 22 don't have contact with everybody who is involved.

09:42:09AM 23 And then what happens is that not every defense
09:42:13AM 24 counsel may be attuned into what is going on nationally,
09:42:17AM 25 they may fail to raise the issue, and consequently that

09:42:21AM 1 results in there being adverse rulings entered, and it
09:42:25AM 2 would ultimately, for precedential value, have an adverse
09:42:31AM 3 effect on Mr. Lorente.

09:42:33AM 4 So for that reason we believe we are entitled to the
09:42:37AM 5 complete list, and names on those lists, so we can
09:42:40AM 6 effectively litigate the issue, should the court allow
09:42:43AM 7 Mr. Lorente to withdraw his plea.

09:42:46AM 8 Secondly, the cases that the government does identify
09:42:51AM 9 in its motion, three of those, Matish, Darby, and Eure,
09:42:58AM 10 are actually Eastern District of Virginia cases. I do not
09:43:03AM 11 think those raise Rule 41 issues, because the magistrate
09:43:06AM 12 who issued the original warrant was out of the Eastern
09:43:09AM 13 District of Virginia. Those motions primarily address
09:43:13AM 14 motion to suppress presentation, not the Rule 41 problems
09:43:16AM 15 that are presented with a warrant that is issued for an
09:43:21AM 16 extraterritorial search, which would be out of that
09:43:25AM 17 district.

09:43:27AM 18 So, effectively, the government has really identified
09:43:30AM 19 three cases in their motion, the one out of the Eastern
09:43:33AM 20 District of Pennsylvania, one out of the Eastern District
09:43:36AM 21 of Louisiana, and one out of the Southern District of
09:43:39AM 22 Ohio. The opinion out of Wisconsin, which I described in
09:43:44AM 23 our last motion, they never raised the Rule 41 issue in
09:43:47AM 24 that motion.

09:43:48AM 25 Those are the only things I would like to add to the

09:43:53AM 1 court before it rules today. Thank you.

09:43:56AM 2 MR. GOLDSMITH: Good morning, your Honor. Robert
09:44:00AM 3 Goldsmith appearing for Gerald Lesan, who is also present.
09:44:04AM 4 I just want to comment on the fact that both filings from
09:44:07AM 5 the government and from the defense --

09:44:09AM 6 THE COURT: A little louder, please.

09:44:10AM 7 MR. GOLDSMITH: Both filings show that these
09:44:16AM 8 issues are still at a very early stage of development,
09:44:19AM 9 both the issues regarding discovery of the NIT program the
09:44:23AM 10 government used, as well as the search issues.

09:44:27AM 11 I know that another defendant, Mr. Tippens, I believe
09:44:32AM 12 pending before this court as well, will be filing a motion
09:44:35AM 13 to suppress on search issues, some of which the court has
09:44:39AM 14 ruled on, but some of which are -- because of the ferment
09:44:45AM 15 going on in all of these cases, are issues the court
09:44:48AM 16 hasn't ruled on yet.

09:44:50AM 17 So what these show to me is that they totally support
09:44:54AM 18 our motion to withdraw the guilty plea, because not only
09:44:59AM 19 has this court already ruled on the discovery issue, which
09:45:02AM 20 we believe would apply equally to both Mr. Lorente and
09:45:06AM 21 Mr. Lesan, but also because there are so many other issues
09:45:10AM 22 now that are coming to a head that are new and I think
09:45:16AM 23 deserve litigation on this unique and evolving area.

09:45:21AM 24 And so I think not only because this court has ruled
09:45:23AM 25 favorably on discovery, but because it is such an area of

09:45:27AM 1 ferment, Mr. Lesan's motion to withdraw should be granted.
09:45:30AM 2 Thank you.

09:45:37AM 3 MR. HAMPTON: Good morning, your Honor. Matt
09:45:45AM 4 Hampton on behalf of the government. I will first just
09:45:49AM 5 address the issue of the case list. I want to be clear,
09:45:52AM 6 the government doesn't have a case list, as I had stated
09:45:56AM 7 last week at the hearing.

09:45:59AM 8 What we did do, as we had done in the Michaud
09:46:01AM 9 proceeding, we went back to the FBI -- or my colleague at
09:46:06AM 10 CEOS went back to the FBI to ask for updated numbers of
09:46:10AM 11 arrests. So we know there have been, so far that we know
09:46:14AM 12 of, approximately 180 -- I believe it is 186 arrests that
09:46:19AM 13 have resulted in charges, state and federal. There is not
09:46:23AM 14 a list of all cases pending, or a list of all cases in
09:46:27AM 15 every district. Every judicial district, every
09:46:30AM 16 U.S. Attorney's Office makes individual charging
09:46:33AM 17 decisions. To the extent there have been state
09:46:34AM 18 prosecutions, those are individual decisions, as well.
09:46:38AM 19 That list is what we know about arrests. But it is just
09:46:41AM 20 the number of arrests that have been made.

09:46:45AM 21 The defendant Michaud did make that request. It was
09:46:50AM 22 the subject of a motion to compel. The government
09:46:52AM 23 responded. I don't believe that the court ruled on that.
09:46:56AM 24 All I guess I would say is, I don't know that Rule 16
09:47:00AM 25 compels the government to assemble a list of all

litigation pending. It is an enormous burden, actually, to ask the government to go and pull every district and get a name of a defendant and a case number. And, of course, there would be concerns about is the government then required to constantly update that list and provide additional updates about the docket.

I did, in filing my supplement, try to make sure that I identified all the cases that I knew about, and that we are aware of, where there have been rulings on these issues. I believe we have done that. I think there is nine or ten cases cited. I don't believe there are any other rulings.

But what's going on in the country, I think, is not really relevant to the issue here today. The ultimate question is, should the defendants be allowed to withdraw their pleas.

Every defendant who is charged with a crime -- every defendant who is charged with a crime that arises out of some larger operation has a choice to make. They can raise novel issues, they can challenge the government's proof, or they can decide to enter a plea. The defendants here made that choice.

The question is, given the fact that there is pending litigation around the country, and this case does raise some novel issues and some not so novel issues, but there

are novel issues, should that entitle the defendants to reconsider their earlier decision?

Ultimately, it is up to the court to exercise its discretion to determine whether this is an appropriate case to let the defendants take back their plea and reconsider their earlier decision.

In the government's view, they had an opportunity to weigh the costs and benefits of pleading guilty. They chose to plead guilty. They did what many defendants do, which is decide to forego litigation for the certainty of a plea. In the government's view, the appropriate answer is to hold the defendants to their bargain.

But, of course, if the court feels the unique issues in this case merit withdrawal, that's why the court is here, and we certainly respect that is the court's decision to make.

THE COURT: Thank you.

MR. HAMPTON: Thank you, your Honor.

THE COURT: Let me talk to Mr. Lesan and Mr. Lorente about this for a minute. Before I ultimately rule on this question of whether you should be allowed to withdraw your pleas, I want to be sure you understand what you're doing and what you're facing.

We now know, from the defendants showing some 48 cases that are similar to yours, and arose from the same basic

09:51:32AM 1 facts, it is clear from what we do have that in the
09:51:48AM 2 majority of the cases where there have been rulings, the
09:51:54AM 3 evidence was not suppressed, and the various judges that
09:52:01AM 4 have ruled on these similar issues, the majority of them
09:52:05AM 5 have ruled that there should not be a suppression.

09:52:13AM 6 I have suppressed evidence in the Michaud case. There
09:52:20AM 7 is no assurance that in your cases, or the case of
09:52:25AM 8 Mr. Tippens that is set next week, that I will rule the
09:52:30AM 9 same way.

09:52:33AM 10 There is now a whole lot of -- there are a whole lot
09:52:40AM 11 of opinions that judges have given orally or in writing
09:52:48AM 12 about the similar issues, in the Michaud case. And so
09:52:55AM 13 when I am faced with ruling on similar issues I have a lot
09:53:00AM 14 more judicial thinking from other judges that I would
09:53:06AM 15 typically look at and consider in deciding what the proper
09:53:12AM 16 course of action is.

09:53:16AM 17 Also, the facts presented to the court may be
09:53:18AM 18 different in your cases, either from you or from the
09:53:23AM 19 government. There may be other information. So there is
09:53:26AM 20 no assurance that this court or any other court will rule
09:53:34AM 21 a particular way on the same issues.

09:53:40AM 22 Do both of you understand that?

09:53:48AM 23 DEFENDANT LORENTE: Yes, your Honor.

09:53:49AM 24 DEFENDANT LESAN: Yes.

09:53:50AM 25 THE COURT: Now, there are a lot of issues pending

09:53:54AM 1 arising from these searches. There is no telling where
09:53:57AM 2 the law is going to end up after everybody gets rulings
09:54:04AM 3 and the cases go on appeal. There is no telling where the
09:54:13AM 4 law will end up on appeal because there is a lot of
09:54:16AM 5 difference among the judges that have already ruled on
09:54:18AM 6 these issues. When judges don't agree on the trial court
09:54:26AM 7 level, it leads to appeals, and appellate courts are not
09:54:37AM 8 very predictable.

09:54:40AM 9 If you withdraw your pleas, it is likely to be many
09:54:45AM 10 months, and possibly years, before your cases are totally
09:54:51AM 11 resolved. I like to think that my court is efficient, and
09:54:59AM 12 we try not to let things drag out, but once cases go on
09:55:05AM 13 appeal, we trial judges think it is like putting the case
09:55:13AM 14 in a dark hole, it may or may not come out at any
09:55:21AM 15 reasonable time.

09:55:22AM 16 Your custody status, of course, may affect your
09:55:33AM 17 judgment in regard to the unknown amount of time that you
09:55:37AM 18 would be facing before resolution.

09:55:46AM 19 Counsel, you may be able to help me with this. I have
09:55:51AM 20 not looked at the law on this. What is the risk of
09:55:59AM 21 statements made in plea negotiations and the colloquy with
09:56:05AM 22 the court at the time of the entry of the plea -- is there
09:56:11AM 23 any risk of those things being admissible at the time of
09:56:15AM 24 trial? I haven't looked at the law.

09:56:21AM 25 MR. HAMPTON: Your Honor, I would have to look at

09:56:25AM 1 the rule to be certain, but I believe those statements
09:56:28AM 2 would not be admissible. I am not 100 percent certain on
09:56:32AM 3 that, but I believe the rules of evidence may cover that
09:56:34AM 4 precise issue.

09:56:35AM 5 THE COURT: My recollection is it is not
09:56:37AM 6 admissible, but I haven't looked at the law. You are
09:56:39AM 7 taking your chance on whatever the law is on that subject.
09:56:43AM 8 Your lawyers can tell you more about that.

09:56:45AM 9 You need to be aware, and I have touched on this I
09:56:50AM 10 think last week, the United States Attorney, if you
09:56:57AM 11 withdraw your pleas, can go back to the original charges,
09:57:07AM 12 but they can also charge you with any other crimes that
09:57:11AM 13 they think they can prove. And so it is possible that
09:57:17AM 14 they would supersede your indictments with additional
09:57:21AM 15 charges.

09:57:27AM 16 One of the important things here that you need to
09:57:29AM 17 think about is that the benefits that you gained in your
09:57:39AM 18 plea negotiations and your plea agreements are lost. And
09:57:50AM 19 let me recite, looking at Mr. Lesan's -- Do I pronounce
09:57:59AM 20 your name right?

09:58:02AM 21 DEFENDANT LESAN: It's Lesan, your Honor.

09:58:08AM 22 THE COURT: You bargained for an acceptance of
09:58:11AM 23 responsibility graded on the guidelines. That will be
09:58:16AM 24 lost. You bargained for a sentencing recommendation of
09:58:24AM 25 not greater than 60 months. That recommendation will be

lost. There is a waiver of -- or there is confidentiality agreements in regard to testing. That will be lost. The government agreed not to prosecute you for additional offenses in the plea agreement, but that agreement will be lost, as I have just indicated.

As to Mr. Lorente's plea, much the same, I believe, but let me refer to the plea agreement. Again, you will lose the guideline acceptance of responsibility. You will lose the sentencing recommendation that you had agreed to. You give up the right to be free from prosecution of other cases that you agreed to -- or other charges that you agreed to in the plea agreement. As I indicated, the government can, if they choose to, charge you with additional offenses. Those are just some of the things in the plea agreements that will be lost. Everything else in those plea agreements will be lost, as well, if you change your pleas.

Now, do both of you understand that?

DEFENDANT LESAN: Yes, your Honor.

DEFENDANT LORENTE: Yes, your Honor.

THE COURT: Have you discussed those risks with your lawyers?

DEFENDANT LESAN: Yes, your Honor.

DEFENDANT LORENTE: I have.

THE COURT: Counsel, you are satisfied that the

defendants understand their rights and what they are going to be giving up if they should change their pleas?

MR. HAMOUDI: I do, your Honor.

MR. GOLDSMITH: Likewise, your Honor, yes.

THE COURT: As counsel pointed out, this is a discretionary call, but it is not totally discretionary. It is not just what I think ought to happen. The defendants have to show a fair and just reason for withdrawal of their pleas.

I think the law indicates there should be a liberal application of that rule. In this circumstance it is my judgment that there are intervening circumstances since their plea that did not exist at the time of the plea, and those circumstances justify a change of plea.

Typically non-binding rulings from other courts are not sufficient to justify a plea change, but an impending review of the law by the Supreme Court is sufficient.

And when you look at the number of cases, 180-some, now filed, and the 48 listed in the defense listing/spreadsheet that are similar cases, and when you look at the motions pending in those cases, and the rulings that have been made, even though those rulings are not binding on this court, what is apparent is that the rulings go different ways. Not only that, but the rulings from the various courts that have ruled on these

10:03:41AM 1 suppression issues are based on different rationales,
10:03:47AM 2 different reasoning by different judges.

10:03:56AM 3 I have not looked at all of the rulings that have been
10:04:00AM 4 made, but I have looked at some of them, and it is
10:04:04AM 5 important that some judges have given this whole
10:04:07AM 6 suppression motion rather short shrift, and others have
10:04:11AM 7 found parts of it very troubling. There are cases that
10:04:19AM 8 seem to be going all sorts of different directions, even
10:04:23AM 9 though the majority of the district court rulings so far
10:04:28AM 10 deny suppression motions.

10:04:38AM 11 It appears to me that there is impending review of the
10:04:46AM 12 issues raised in these motions to suppress in various
10:04:51AM 13 courts of appeal around the country. It looks to me very
10:05:00AM 14 likely that some of these issues will find their way into
10:05:04AM 15 the Supreme Court, although nobody knows whether that
10:05:07AM 16 actually would happen, and nothing is pending there now
10:05:11AM 17 that I am aware of.

10:05:19AM 18 Now, these cases have been assigned to my court for
10:05:32AM 19 the sake of uniformity and the handling of the cases
10:05:36AM 20 within this district. I have ruled on the suppression
10:05:42AM 21 issues on only one of the similar cases, the Michaud case.
10:05:52AM 22 The last ruling in that case was made after the defendants
10:05:59AM 23 in these two cases entered their plea. And there is
10:06:07AM 24 reason to hope at least that rulings will be consistent if
10:06:23AM 25 other motions are made, similar to the ones in Michaud,

10:06:28AM 1 although there is no assurance of that. And in that case,
10:06:35AM 2 of course, a notice of appeal has been filed, leaving a
10:06:39AM 3 likelihood of review in Michaud.

10:06:47AM 4 As we know, other cases around the country have ruled
10:06:50AM 5 on similar issues, and at least two have suppressed the
10:06:58AM 6 evidence.

10:07:03AM 7 I wanted to address the issues that are likely
10:07:08AM 8 appealable issues, because they are not -- the law is not
10:07:16AM 9 clearly decided. The first, of course, is the validity of
10:07:19AM 10 the subject warrant under Criminal Rule 41. And the facts
10:07:27AM 11 underlying the validity of that warrant based on the
10:07:31AM 12 server being in Virginia is an issue that is ripe for
10:07:44AM 13 disagreement.

10:07:48AM 14 The nature of Rule 41 as a simple procedural rule or a
10:07:54AM 15 structural rule that has the force of the Constitution
10:08:00AM 16 behind it is not clear in the law, and different judges
10:08:10AM 17 have come down differently at this point on that subject.
10:08:14AM 18 And that, of course, has to do with the power of
10:08:17AM 19 magistrate judges, which is an issue in this case.

10:08:26AM 20 The application of the good faith exception to each
10:08:35AM 21 case is a subject that is likely to be the basis for
10:08:42AM 22 appeal.

10:08:49AM 23 The discoverability of the details of the so-called
10:08:55AM 24 NIT is also a subject for appeal. As you know, in the
10:09:09AM 25 Michaud case I had a hearing in camera. Whether I was

correct in my ruling is also a subject of appealable issues.

The application of the law enforcement privilege is also, I think, appealable under the facts of the cases here. Some have applied it, including myself. Others may disagree about that. If that privilege applies, and the details of the NIT are not discoverable, what sanction, if any, is appropriate, from none to suppression to dismissal, are, I think, issues that are also appealable.

So there is a lot here where the law is simply not well settled.

And, of course, the facts are also in dispute. In particular, I relied in some of the rulings I have made on the expert evidence of a particular witness, and discounted an FBI witness' testimony in comparison to the other witness. Other judges have come down differently on the credibility of the experts that have testified basically to the same thing. So you end up with credibility issues, as well.

So as I indicated, it appears highly likely to me that the issues will go up to the various circuits, and it is not unlikely that some of these issues will end up in the Supreme Court. It is complex and hard to forecast what is going to happen. It becomes more complex as you read the various district court rulings on these subjects, because,

10:11:55AM 1 as I think I indicated before, the rulings were all over
10:11:58AM 2 the map as to what law applies, how it applies, what the
10:12:08AM 3 facts are, and so forth.

10:12:10AM 4 Now, there is another somewhat collateral reason that
10:12:23AM 5 I think these defendants should be allowed to withdraw
10:12:26AM 6 their plea. And that reason is the defendants' complaint
10:12:35AM 7 that the United States Attorney applied time pressure to
10:12:37AM 8 them by short deadlines on plea offers. So they were
10:12:42AM 9 forced into plea decisions before the companion and lead
10:12:50AM 10 case, the Michaud case, and its motion practices were
10:12:55AM 11 resolved.

10:12:58AM 12 The government's plea negotiation tactics are not
10:13:00AM 13 typically the court's concern, and I think they have to
10:13:06AM 14 make their own choices about how to conduct their plea
10:13:12AM 15 negotiations. But in this situation, that is an
10:13:17AM 16 additional reason. Those tactics add to the defendants'
10:13:26AM 17 arguments for plea withdrawal, when they are put under
10:13:30AM 18 pressure to make a quick decision in matters that are as
10:13:35AM 19 complex as these are.

10:13:40AM 20 So it is my judgment that in both cases the motion to
10:13:43AM 21 withdraw guilty plea is granted. That's Docket 61 in
10:13:53AM 22 Mr. Lesan's case, and Docket No. 72 in Mr. Lorente's case.
10:14:04AM 23 And it is so ordered.

10:14:06AM 24 The sentencing dates will be stricken, and the orders
10:14:12AM 25 regarding sentencing procedure will also be stricken, and

10:14:18AM 1 we will set the matter for trial and pretrial deadlines.

10:14:25AM 2 Speedy trial, according to my deputy, would require a
10:14:33AM 3 trial date in September, like September 26th. I would ask
10:14:47AM 4 the clerk to issue a scheduling order with that date, and
10:14:59AM 5 the other pretrial dates that flow from that. It gives
10:15:02AM 6 you a short time to make whatever motions you want to
10:15:10AM 7 make, but I don't think we can delay setting, because of
10:15:15AM 8 speedy trial rules. And, of course, motions can delay
10:15:21AM 9 things and so forth. We need to get these on track.

10:15:31AM 10 MR. HAMPTON: Your Honor, just to clarify, is that
10:15:33AM 11 9/26 for both cases?

10:15:35AM 12 THE COURT: Pardon?

10:15:36AM 13 MR. HAMPTON: The trial date is for both?
10:15:38AM 14 September 26th as to both cases?

10:15:40AM 15 THE COURT: That doesn't mean they are combined.

10:15:42AM 16 MR. HAMPTON: I understand. The dates are the
10:15:45AM 17 same?

10:15:47AM 18 THE COURT: Yeah, they should both be set the same
10:15:50AM 19 day. At this time it appears pretty clear and obvious
10:15:54AM 20 that motions will be filed that will delay the trial date,
10:15:59AM 21 by operation of law anyway. If you don't file a motion,
10:16:09AM 22 go to trial in September. Okay? Any questions?

10:16:17AM 23 MR. HAMOUDI: Your Honor, I do have a question. I
10:16:19AM 24 had requested and made mention of these 186 cases. And
10:16:24AM 25 the government made representations --

10:16:25AM 1 THE COURT: Yeah, you did. And I meant to comment
10:16:27AM 2 on that. Make your motion.

10:16:31AM 3 MR. HAMOUDI: Thank you, your Honor.

10:16:39AM 4 THE COURT: I don't want to rule on them now.
10:16:46AM 5 That's the kind of thing I would hope you would talk with
10:16:49AM 6 the government about and come to some agreement on. But
10:16:54AM 7 if you can't agree, well, certainly make your motion, and
10:16:58AM 8 we will decide. They may have some trouble getting the
10:17:01AM 9 information you want, so they should have a chance to
10:17:05AM 10 respond. Okay? Thank you.

11 (Proceedings adjourned.)
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